

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY JUNE 21, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE MARCH 28, 2012

AMENDED IN SENATE MARCH 8, 2012

SENATE BILL

No. 965

Introduced by Senator Wright

(Coauthor: Senator Blakeslee)

(Principal coauthor: Assembly Member Alejo)

January 11, 2012

An act to *amend Section 13228.14 of, to add Sections 13167.6 and 13169.5 to, and to add ~~Section 13293~~ Chapter 4.1 (commencing with Section 13287) to Division 7 of, the Water Code, relating to ~~water quality: water.~~*

LEGISLATIVE COUNSEL'S DIGEST

SB 965, as amended, Wright. State Water Resources Control Board and California regional water quality control ~~boards: ex parte communications: boards.~~

~~Under~~

(1) *Under* existing law, the State Water Resources Control Board (state board) and the California regional water quality control boards (regional boards) implement the Federal Water Pollution Control Act and the Porter-Cologne Water Quality Control Act by prescribing waste discharge requirements for discharges to the waters of the state, as specified. ~~Existing~~

This bill would require the state board and each regional board to establish an environmental justice coordinator with prescribed duties.

(2) *Existing law authorizes the state board and regional boards to hold hearings necessary for carrying out their duties, as specified.*

This bill would also require the state board or a regional board, if the amount of time for each individual speaker to comment or testify at any hearing of the state board or regional board is limited as specified, to provide at least twice the allotted time to a member of the public who utilizes a translator, with a prescribed exception.

~~The~~

(3) *Existing law, the Administrative Procedure Act, establishes the conduct of administrative adjudicative proceedings, which are defined as evidentiary hearings for determination of facts pursuant to which a state agency formulates and issues a decision. Existing law defines a decision as an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person. ~~The While an adjudication is pending, the act prohibits, as an ex parte communication, while an adjudication is pending,~~ any communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer, as defined, from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication. The act provides that if the above prohibition is violated, the presiding officer shall promptly disclose the content of the communication on record and give all parties an opportunity to address the communication, as specified. The act also provides that a violation of that prohibition may be grounds for disqualification of the officer who engaged in the ex parte communication.*

This bill would provide that the ex parte communications provisions of the Administrative Procedure Act do not apply to specified proceedings of the state board or a regional board. The bill would; instead, define an ex parte communication for these purposes as an oral or written communication with one or more board members regarding those specified state board or regional board proceedings, and proceedings. This bill would specify the only instances in which an ex parte communication involving those specified proceedings is permissible. The bill would permit oral ex parte communications at any time by any board member if the board member involved in the communication notifies, and provides specified requirements for the

participation of, all interested persons, as defined. The bill would permit written ex parte communications by any person provided that the interested person who makes the communications provides copies of the communication to all interested persons, as specified. The bill would require that if an individual ex parte communication meeting or call is granted to any interested person, all other interested persons shall also be granted individual ex parte meetings of a substantially equal period of time with the board member.

The bill would authorize a board to prohibit ex parte communications for a period beginning not more than 14 days before the day of the a board meeting at which the decision in the proceeding is scheduled for board action.

The bill would require that, in any case, all ex parte communications to be reported, as specified, by the interested person, regardless of whether the communication was initiated by the interested person.

The bill would authorize the state board or a regional board, in the event that an interested person fails to provide the any required notice in the manner required by the bill, to use the remedies available under the administrative adjudication provisions of the Administrative Procedure Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13167.6 is added to the Water Code, to
- 2 read:
- 3 13167.6. (a) At any hearing of the state board, if the state
- 4 board limits the amount of time for each individual speaker to
- 5 comment or testify pursuant to Section 11125.7 or 54954.3 of the
- 6 Government Code, the state board shall provide at least twice the
- 7 allotted time to a member of the public who utilizes a translator;
- 8 in order to ensure that non-English speakers receive the same
- 9 opportunity to directly address the state board.
- 10 (b) Subdivision (a) shall not apply if the state board utilizes
- 11 simultaneous translation equipment in a manner that allows the
- 12 state body to hear the translated public testimony simultaneously.
- 13 SEC. 2. Section 13169.5 is added to the Water Code, to read:

1 13169.5. *The state board and each regional board shall*
2 *establish an environmental justice coordinator duties tasks include,*
3 *but are not limited to, all of the following:*

4 (a) *Conducting research on best practices for developing and*
5 *implementing the state board's environmental justice program.*

6 (b) *Conducting training and developing informational material*
7 *on environmental justice for all appointees, management, and staff*
8 *of the state board or regional board.*

9 (c) *Reviewing and incorporating into the environmental justice*
10 *program relevant legislation.*

11 (d) *Providing assistance and guidance on environmental justice*
12 *events and activities to the executive director relative to the*
13 *California Environmental Protection Agency's Environmental*
14 *Justice Advisory Committee.*

15 (e) *Incorporating the state board's bilingual program to ensure*
16 *full participation by all Californians.*

17 SEC. 3. *Section 13228.14 of the Water Code is amended to*
18 *read:*

19 13228.14. (a) Any hearing or investigation by a regional board
20 relating to investigating the quality of waters of the state,
21 prescribing waste discharge requirements, issuing cease and desist
22 orders, requiring the cleanup or abatement of waste, or imposing
23 administrative civil liabilities or penalties may be conducted by a
24 panel of three or more members of the regional board, but any
25 final action in the matter shall be taken by the regional board. Due
26 notice of any hearing shall be given to all affected persons. After
27 a hearing, the panel shall report its proposed decision and order to
28 the regional board and shall supply a copy to all parties who
29 appeared at the hearing and requested a copy.

30 (b) No party who appears before the panel is precluded from
31 appearing before the regional board at any subsequent hearing
32 relating to the matter. Members of the panel are not disqualified
33 from sitting as members of the regional board in deciding the
34 matter.

35 (c) The regional board, after making an independent review of
36 the record and taking additional evidence as may be necessary,
37 may adopt, with or without revision, or reject, the proposed
38 decision and order of the panel.

39 (d) (1) *At any hearing of a regional board, if the regional board*
40 *limits the amount of time for each individual speaker to comment*

1 or testify pursuant to Section 11125.7 or 54954.3 of the
2 Government Code, the regional board shall provide at least twice
3 the allotted time to a member of the public who utilizes a translator,
4 in order to ensure that non-English speakers receive the same
5 opportunity to directly address the state board.

6 (2) Paragraph (1) shall not apply if a regional board utilizes
7 simultaneous translation equipment in a manner that allows the
8 regional body to hear the translated public testimony
9 simultaneously.

10 SEC. 4. Chapter 4.1 (commencing with Section 13287) is added
11 to Division 7 of the Water Code, to read:

12
13 *CHAPTER 4.1. EX PARTE COMMUNICATIONS*
14

15 13287. (a) For the purposes of this section:

16 (1) "Board" means the state board or a regional board.

17 (2) "Ex parte communication" means an oral or written
18 communication with one or more board members concerning
19 matters, other than a matter of procedure or practice that is not
20 in controversy, under the jurisdiction of a board, regarding a
21 pending action of the board that satisfies both of the following:

22 (A) The action does not identify specific persons as dischargers,
23 but instead allows persons to enroll or file an authorization to
24 discharge under the action.

25 (B) The action is for adoption, modification, or rescission of
26 one or more of the following:

27 (i) Waste discharge requirements pursuant to Section 13263 or
28 13377.

29 (ii) Conditions of water quality certification pursuant to Section
30 13160.

31 (iii) Conditional waiver of waste discharge requirements
32 pursuant to Section 13269.

33 (3) "Interested person" means any of the following:

34 (A) Any person who will be required to enroll or file
35 authorization to discharge pursuant to the action at issue before
36 the board or that person's agents or employees, including persons
37 receiving consideration to represent that person.

38 (B) Any person with a financial interest, as described in Article
39 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
40 Government Code, in a matter at issue before a board, or that

1 *person's agents or employees, including persons receiving*
2 *consideration to represent that person.*

3 *(C) A representative acting on behalf of any formally organized*
4 *civic, environmental, neighborhood, business, labor, trade, or*
5 *similar association who intends to influence the decision of a board*
6 *member on a matter before the board.*

7 *(b) Notwithstanding Section 11425.10 of the Government Code,*
8 *the ex parte communications provisions of the Administrative*
9 *Procedure Act (Article 7 (commencing with Section 11430.10) of*
10 *Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government*
11 *Code) do not apply to a board action identified in paragraph (2)*
12 *of subdivision (a). This section only applies to those actions.*

13 *(c) For the purposes of this section, and except as limited by*
14 *subdivision (d), ex parte communications regarding a board action*
15 *identified in paragraph (2) of subdivision (a) may be permitted as*
16 *follows:*

17 *(1) All ex parte communications shall be reported by the*
18 *interested person, regardless of whether the communication was*
19 *initiated by the interested person.*

20 *(2) A notice of ex parte communication shall be filed with the*
21 *board within seven working days of the communication. The notice*
22 *may address multiple ex parte communications in the same*
23 *proceeding, provided that notice of each communication identified*
24 *therein is timely. The notice shall include all of the following*
25 *information:*

26 *(A) The date, time, and location of the communication, and*
27 *whether it was oral or written, or both.*

28 *(B) The identities of each board member involved, the person*
29 *initiating the communication, and any persons present during the*
30 *communication.*

31 *(C) A description of the interested person's communication and*
32 *the content of this communication. A copy of any written,*
33 *audiovisual, or other material used for or during the*
34 *communication shall be attached to this description.*

35 *(3) Board staff shall promptly post any notices provided*
36 *pursuant to paragraph (2) on the board's Internet Web site and*
37 *distribute the notice on any available electronic distribution list*
38 *concerning the action.*

39 *(d) A board may prohibit ex parte communications for a period*
40 *beginning not more than 14 days before the day of a board meeting*

1 at which the decision in the proceeding is scheduled for board
2 action. If a board continues the decision, it may permit *ex parte*
3 communications during the interval between the originally
4 scheduled date and the date that the decision is calendared for
5 final decision, and may prohibit *ex parte* communications for 14
6 days before the day of the board meeting to which the decision is
7 continued.

8 (e) If an interested person fails to provide any required notice
9 in the manner required by this section, the board may use any of
10 the remedies available pursuant to the administrative adjudication
11 provisions of the Administrative Procedure Act (Chapter 4.5
12 (commencing with Section 11400) of Part 1 of Division 3 of Title
13 2 of the Government Code), including the issuance of an
14 enforcement order, or sanctions pursuant to Article 12
15 (commencing with Section 11455.10) of Chapter 4 of Part 1 of
16 Division 3 of Title 2 of the Government Code.

17 SECTION 1. ~~Section 13293 is added to the Water Code, to~~
18 ~~read:~~

19 ~~13293. (a) For the purposes of this section:~~

20 ~~(1) "Ex parte communication" means an oral or written~~
21 ~~communication with one or more board members concerning~~
22 ~~matters, other than a matter of procedure or practice that is not in~~
23 ~~controversy, under the jurisdiction of a board, regarding an action~~
24 ~~of the board that satisfies both of the following:~~

25 ~~(A) The action does not identify specific persons as dischargers,~~
26 ~~but instead allows persons to enroll or file an authorization to~~
27 ~~discharge under the action.~~

28 ~~(B) The action is for adoption, modification, or rescission of~~
29 ~~one or more of the following:~~

30 ~~(i) Waste discharge requirements pursuant to Section 13263 or~~
31 ~~13377.~~

32 ~~(ii) Conditions of water quality certification pursuant to Section~~
33 ~~13160.~~

34 ~~(iii) Conditional waiver of waste discharge requirements~~
35 ~~pursuant to Section 13269.~~

36 ~~(2) "Interested person" means either of the following:~~

37 ~~(A) Any person who will be required to enroll or file~~
38 ~~authorization to discharge pursuant to the action or with a financial~~
39 ~~interest, as described in Section 87103 of the Government Code,~~
40 ~~in a matter at issue before a board, or that person's agents or~~

1 employees, including persons receiving consideration to represent
2 that person.

3 (B) A representative acting on behalf of any formally organized
4 civic, environmental, neighborhood, business, labor, trade, or
5 similar association who intends to influence the decision of a board
6 member on a matter before the board.

7 (b) Notwithstanding Section 11425.10 of the Government Code,
8 the ex parte communications provisions of the Administrative
9 Procedure Act (Article 7 (commencing with Section 11430.10) of
10 Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government
11 Code) do not apply to a board action identified in paragraph (1)
12 of subdivision (a). This section only applies to those actions.

13 (c) For the purposes of this section, and except as limited by
14 subdivision (d), ex parte communications regarding a board action
15 identified in paragraph (1) of subdivision (a) may be permitted
16 only as follows:

17 (1) Oral ex parte communications may be permitted at any time
18 by any board member provided that the board member involved
19 in the communication does each of the following:

20 (A) Invites all interested persons to attend the meeting or sets
21 up a conference call in which all interested persons may participate.

22 (B) Gives notice of the meeting or call as soon as possible, but
23 no less than three days before the meeting or call.

24 (2) Written ex parte communications may be permitted by any
25 interested person provided that the interested person making the
26 communication serves copies of the communication on all other
27 interested persons on the same day the communication is sent to
28 a board member, or makes arrangements with the board staff to
29 ensure that all interested persons have been provided copies of the
30 communication.

31 (3) If an individual ex parte communication meeting or call is
32 granted to any interested person, all other interested persons shall
33 also be granted individual ex parte meetings of a substantially
34 equal period of time with the board member. The interested person
35 requesting the initial individual meeting shall notify the other
36 interested persons that its request has been granted, and shall file
37 a certificate of service of this notification at least three days before
38 the meeting or call.

39 (d) A board may prohibit ex parte communications for a period
40 beginning not more than 14 days before the day of the board

1 meeting at which the decision in the proceeding is scheduled for
2 board action. If the board continues the decision, it may permit ex
3 parte communications during the first half of the interval between
4 the originally scheduled date and the date that the decision is
5 calendared for final decision, and may prohibit ex parte
6 communications for the second half of the period, provided that
7 the period of prohibition shall begin not more than 14 days before
8 the day of the board meeting to which the decision is continued.

9 (e) All ex parte communications made regarding a board action
10 identified in paragraph (1) of subdivision (a) shall be reported by
11 the interested person, regardless of whether the communication
12 was initiated by the interested person. A notice of ex parte
13 communication shall be filed with the board within three working
14 days of the communication. The notice may address multiple ex
15 parte communications in the same proceeding, provided that notice
16 of each communication identified therein is timely. The notice
17 shall include all of the following information:

18 (1) The date, time, and location of the communication, and
19 whether it was oral, written, or both.

20 (2) The identities of each board member involved, the person
21 initiating the communication, and any persons present during the
22 communication.

23 (3) A description of the interested person's communication and
24 the content of this communication. A copy of any written,
25 audiovisual, or other material used for or during the communication
26 shall be attached to this description.

27 (f) If an interested person fails to provide notice as required by
28 this section, a board may use the remedies available under the
29 administrative adjudication provisions of the Administrative
30 Procedure Act (Chapter 4.5 (commencing with Section 11400) of
31 Part 1 of Division 3 of Title 2 of the Government Code), including
32 the issuance of an enforcement order, or sanctions pursuant to
33 Article 12 (commencing with Section 11455.10) of Chapter 4 of
34 Part 1 of Division 3 of Title 2 of the Government Code.